



U.S. Immigration and Customs Enforcement

August 30, 2019

Rebecca Wolozin
LEGAL AID JUSTICE CENTER
6066 Leesburg Pike, Suite 520
Falls Church, VA 220041

Re: *Touhy* Request/Testimony Subpoena to ICE related to *J.E.C.M. et al. v. Jonathan Hayes et al.*, 1:18-cv-903 (E.D. Va.)

Dear Ms. Wolozin:

U.S. Immigration and Customs Enforcement (ICE) is in receipt of your Subpoena, dated July 24, 2019, received on July 25, 2019, seeking witness testimony pertaining to a Memorandum of Agreement (MOA) between the U.S. Department of Health and Human Services (HHS), ICE, and U.S. Customs and Border Protection (CBP). On August 5, 2019, ICE responded to your Subpoena asserting several objections and advised you that ICE would not be able to comply with the request for testimony regarding the four topics contained in the Subpoena. In response, on August 9, 2019, you provided 21 subsets of information regarding the 4 topics contained in the original request. On August 23, 2019, ICE responded to your Subpoena, noting, among other things, those subsets of inquiries to which ICE could provide more detailed information. This letter serves to provide such information. Additionally, on August 26, 2019, via e-mail, you further narrowed the inquiry relating to subsets 4.c., 4.f., and 4.g.

Please find below the necessary information in response to the individualized subsets of information, as laid out in your August 9, 2019 letter:

1. The particular information that is exchanged under the MOA, since the execution of the MOA to present, specifically:
 - a. *The specific data fields generally received by ICE under Sec. V(B) of the MOA.*

The MOA states that the Office of Refugee Resettlement (ORR) will provide ICE with the name, date of birth, address, fingerprints, and any available identification documents or biographic information regarding the potential UAC sponsor and all adult members of the potential sponsor's household. This information is received by the Law Enforcement Support Center (LESC) electronically through the Interoperability process in the form of an Immigration Alien Query (IAQ). The specific data fields generally received by ICE in these inquiries include the following:

- SUBJECT NAME
- SUBJECT DATE OF BIRTH
- SUBJECT SEX
- SUBJECT PLACE OF BIRTH
- FBI#
- FINGERPRINT IDENTIFICATION NUMBER

Address information is periodically received in a separate Excel document, recently averaging once per month.

- b. *The format of the data generally received by ICE under Sec. V(B) of the MOA, and the technical means by which it is generally transmitted to ICE.*

HHS submits biographic and biometric data via the International Justice and Public Safety Network (NLETS) to the FBI. The FBI creates an Immigration Alien Query (IAQ), which is transmitted to ICE via NLETS. Additionally, address information is periodically sent from HHS to ICE via e-mail as an Excel document, recently averaging once per month.

- c. *The data fields generally transmitted by ICE under Sec. V(C) of the MOA.*

The Law Enforcement Support Center (LESC) transmits a biometric-based summary Immigration Alien Response (IAR), which is transmitted to HHS through NLETS. Depending upon the subject's immigration status and data located in DHS databases, the IAR could contain the following subject data fields:

- FBI Number
- State Identification Number (SID)
- NCIC Number (NIC)
- Name
- Date of Birth
- Country of Birth
- Country of Citizenship
- FIN
- Alien Registration Number (ARN)
- Mother First Name
- Father First Name
- File Control Office (FCO)
- Naturalization Information (Certificate Number, Date and Location)
- Social Security Number (SSN)
- Last Known Address
- Removal Proceedings and/or Prior Removal Information (Case Docket Office, Charge Date, Final Order Date, Removal Date, Port Departed, Event Number and Event Date, Detention Location and Dates)

- Arrival and Departure Information (Port of Entry, Date of Entry, Admitted Until Date, Date of Departure, Passport Number, Class of Admission and I-94 Number)
- Student and Exchange Visitor Information (Student & Exchange Visitor Information System (SEVIS) ID, SEVIS Status, Program Sponsor and Program Start Date)
- Criminal Offense Level
- Subject's current immigration status at the time of IAR completion.

The LESC also transmits the IAR from ACRIME to ACRIME Field, where it is received by the ICE Enforcement and Removal Operations (ERO) Field Office that has geographic jurisdiction over the area where the subject was encountered, and in some cases to the Pacific Enforcement Response Center (PERC).

- d. The format of the data generally provided by ICE under Sec. V(C) of the MOA, and the technical means by which it is generally transmitted by ICE.*

ICE transmits an Immigration Alien Response (IAR) through NLETS to the FBI who then routes the IAR back to HHS.

- e. Any changes to any of the above since the inception of the MOA to the present.*

No.

2. How ICE has implemented the MOA, since its execution to present, specifically:

- a. The general chain of custody for the information received by ICE under Sec. V(B) of the MOA.*

The information received via NLETS resides in the ACRIME (Alien Criminal Response Information Management System) database.

- b. The general chain of custody for the information provided by ICE under Sec. V(C) of the MOA.*

ICE transmits the information via NLETS to the FBI, the FBI routes the information via NLETS back to HHS.

- c. The manner in which, and duration for which, ICE generally maintains any information it receives under Sec. V(B) of the MOA (both in the process of determining and providing information to ORR, and after providing information to ORR).*

The information received resides in the ACRIME database. Retention periods for such information can be found in the ACRIME Systems of Records Notice located at <https://insight.ice.dhs.gov/mgt/igp/Documents/pdf/sorn-dhs-ice-007-acrime.pdf>.

- d. The manner in which ICE generally uses the specific information it receives pursuant to Sec. V(B) of the MOA, to determine and provide to ORR the information set forth under Sec. V(C) of the MOA.*

The MOA notes the information that HHS provides to ICE, which ICE then uses to ascertain criminal and immigration history information. Section C. of the MOA clearly notes that ICE is to conduct a minimum initial screening and provide ORR with any relevant criminal and immigration history information within 72 hours. As noted in the MOA, ICE conducts:

- A biographic/biometric criminal check of national databases;
- A biographic/biometric check for wants and warrants; and
- A biographic/biometric immigration status check of immigration databases.

- e. Whether ICE generally considers the best interests of UACs (either in ORR custody, or no longer in ORR custody) in its implementation of the MOA, and if so, how.*

The purpose of the MOA is clearly articulated in the document. The MOA sets forth the process by which DHS will provide HHS with information necessary to conduct suitability assessment for sponsors of UACs. The MOA further notes that the “Parties recognize such information-sharing as a top priority requiring special attention to ensure that the transfer, placement, and release of UACs are safe for the UACs and the communities into which they are released.”

- f. Any changes to any of the above since the inception of the MOA to the present.*

No.

3. The impact the Consolidated Appropriations Act, P.L. No. 116-6, § 224, 133 Stat. 13 (2019), has had on the implementation of the MOA, if any; specifically:

- a. Whether and how any of ICE’s general practices (as specifically set forth in Topics 1, 2, or 4 herein) have generally changed as a result of the Consolidated Appropriations Act, and if so, in what ways.*

ICE no longer generates leads and takes no enforcement action for removable aliens, consistent with Section 224(a) of the Consolidated Appropriations Act, 2019.

- b. What process ICE generally uses to determine whether any particular individual is subject to any of the exceptions enumerated within the Consolidated Appropriations Act.*

In determining whether an individual is subject to any of the exceptions enumerated in Section 224(b) of the Consolidated Appropriations Act, 2019, ICE conducts:

- A biographic/biometric criminal check of national databases;
- A biographic/biometric check for wants and warrants; and
- A biographic/biometric immigration status check of immigration databases.

c. *What process ICE generally uses to determine whether any particular enforcement action is permitted with respect to any particular individual pursuant to the Consolidated Appropriations Act.*

Consistent with Section 224 of the Consolidated Appropriations Act, 2019, ICE will conduct a biographic/biometric criminal check of national databases, a biographic/biometric check for wants and warrants, and biographic/biometric immigration status check of immigration databases to determine if a sponsor, potential sponsor, or member of a household of a sponsor or potential sponsor has a felony conviction or pending felony charge that relates to those specific offenses enumerated in subsection (b) of the Act.

4. How ICE intends to use the information it has obtained and continues to obtain through the MOA, specifically:

a. *How ICE generally uses, has used, or intends to use in the future the information received under Sec. V(B) of the MOA in furtherance of enforcement actions.*

ICE previously used the information to generate leads to field offices on removable individuals, which was discontinued in April of 2019, consistent with Section 224(a) of the Consolidated Appropriations Act, 2019.

c. *Whether ICE has ever carried out enforcement actions against individuals based on the information received under Sec. V(B) of the MOA, and if so, against how many individuals per fiscal quarter; and how many such individuals per fiscal quarter were detained.*

ICE does not collect statistics to be able to respond to this inquiry. However, as noted previously, since April 2019, no such enforcement action against an individual is being taken that is inconsistent with Section 224 of the Consolidated Appropriations Act, 2019.

e. *Whether ICE considers the best interests of UACs in determining whether or how to carry out enforcement actions against individuals based on the information received under Sec. V(B) of the MOA, and if so, how.*

As noted previously, since April 2019, no enforcement action against an individual is being taken pursuant to information received under the MOA that is inconsistent with Section 224 of the Consolidated Appropriations Act, 2019.

f. *Whether ICE has a formal or written policy or practice of transmitting the information received under Sec. V(B) of the MOA to other agencies other than the U.S. Department of*

Health and Human Services or components thereof, whether in all cases or in certain categories of cases; and, if so, please generally describe the policy or practice.

ICE does not have any formal or written policy or practice of transmitting such information to other agencies other than HHS.

- g. *Whether – in cases in which ICE initiates enforcement actions on the basis of information received under Sec. V(B) of the MOA – ICE has a formal or written policy or practice of advising ORR that an enforcement action has taken place, or of advising ORR of any details of enforcement actions; and if so, please generally describe the policy or practice.*

ICE does not have any formal or written policy or practice of advising ORR on such issues. However, as noted previously, since April 2019, no enforcement action against an individual is being taken that is inconsistent with Section 224 of the Consolidated Appropriations Act, 2019.

It is ICE's position that these responses provide sufficiently detailed information that additional requests for testimony on the same subjects would be duplicative and/or unduly burdensome. Depositions are usually the most burdensome means of obtaining facts in litigation and a court may require that information be sought by means that are "more convenient, less burdensome, or less expensive." *See* Fed. R. Civ. P. 26(b)(2)(C). Notwithstanding, ICE reserves the right to object to future revised subpoenas, pursuant to the factors outlined in 6 C.F.R. § 5.48(a).

Thank you for your anticipated cooperation in complying with applicable Federal law. If you require additional information on this matter, I can be reached via e-mail at shiraz.panthaky@ice.dhs.gov.

Sincerely,



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